



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1459
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,219	07/25/2001	Alvin Kershman	SK-3	6369
21833 7590 12/18/2003				
BOULDER PATENT SERVICE INC				
1021 GAPTER ROAD				
BOULDER, CO 803032924				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1761				

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,219

Applicant(s)

KERSHMAN ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Partyka in view of Colvin, Herzing, Coleman et al, the book " Snacks & Sandwiches" and the article on " Grilled cheese: Plain and simple" for the same reason set forth in the previous office action.

In the response filed Sept. 5, 2003, applicant traverses the 103 rejection. Applicant argues Partyka teaches the use of a hydrocolloid applied to the innermost major surfaces and this teaches directly away from the claimed invention which requires the coating to be on the outermost surfaces. This argument is not persuasive. The method as well as the product do not exclude the hydrocolloid coating disclosed by Partyka. While Partyka discloses coating the inner surface with hydrocolloid, he also teaches to coat the outer surface with edible fat such as butter, margarine, oil, shortening etc. The fat coating of Partyka is not of the same nature as the claimed fat coating because he does not disclose that the fat has a high solid fat index. However, it would have been obvious to one to substitute another type of fat depending on the function desiring to obtain or it would have been obvious to add additional fat depending on the function desired. For example, butter is well known to be a flavoring ingredient that is applied to sandwich to enhance the flavor. However, butter is also known to have a functional utility as shown by Colvin. Colvin teaches that butter can effectively preclude loss of moisture of the bread and the sandwich ingredient; it protects the outer surfaces of the bread slices and preserves them in a lubricated, non-crumbling condition. It would have been obvious to one skilled in the art to use fat that has a high solid fat index when desiring to enhance the functional use of the fat and still achieving

the flavoring as the same time. It would also have been obvious to add additional fat layer when desiring to obtain a barrier function. The fat as claimed is known in the art as shown by Herzing. The use of a fat having high solid fat index will give a more effective barrier because the fat is more solid. With respect to the Herzing reference, applicant argues Herzing uses hard butter to carry a large amount of solids in order to impart flavor with a pleasant texture and eating characteristics and claim 1 requires that the solid fat index lipid mixture has no additional ingredients. The Herzing reference is relied upon only to show that the fat used in the claimed method and product is known in the art and it would have been obvious to one skilled in the art to use such fat when desiring for the fat layer to serve both as a barrier and as flavoring or for the fat to serve as barrier. It is not suggested in the rejection to use the whole Herzing coating composition on the Partyka product. Also, contrary to applicant's argument, claim 1 does not set forth any limitation with respect to requiring the lipid mixture to not contain additional ingredients. Applicant further argues the high solid fat index layer of the claimed invention is not savory. The basis of the argument is not understood. Whether the coating is savory or not is not an issue. Again, it is stressed that the Herzing reference is only used to show that the fat as claimed is known in the art and applicant is not the first to discover such fat. Partyka does not restrict the fat to any specific type; thus, it would have been obvious to one skilled in the art to select the any known fat depending on the function desired and the intended use. It would also have been obvious to one to add additional fat layer after the product is grilled because fat is known to serve as protected layer. The Partyka product is subjected to freezing

condition; thus, having a protected fat layer will enhance the shelf stability of the product. Applicant uses a known ingredient with an expected result. Applicant argues the various features in the dependent claims and these claims are addressed in the rejection. Applicant does not argue how or why such modification would not have been obvious. For example, the thickness of the coating can vary; applicant has not shown any unexpected result over the claimed thickness. It would have been obvious to one skilled in the art to have a thin or thick or any intermediate coating depending on the end function wanted. A thick coating gives a better barrier but might alter the taste; one can readily determine the optimum thickness through routine experimentation. With respect the limitation of the flour paste as adhesive, applicant request showing of documentary proof. It is the examiner's position that such proof is not required in the instant case. Partyka teaches to use hydrocolloid as an adhesive; suitable hydrocolloids include starch. It is well known, the main component of flour is starch. Thus, it is obviously evident that flour is also an adhesive because of the presence of starch.

With respect to the Coleman reference, applicant argues Coleman is directed to producing a browned appearance of a product that is cooked in a microwave oven and the claims are directed to maintaining an appearance that is subjected to a toasting environment. The Coleman et al reference is relied upon to show the addition of bread crumbs and maltodextrin to coating solution. The use of bread crumbs and maltodextrin will give a crispy nature and a browning effect to coating composition regardless of how the end product will be cooked. Cooking in microwave does not give direct heat and the

product still exhibit the crisp and brown appearance. If such ingredients are used in product that is heated with direct heat such as the Partyka product, it is obvious the function of browning and crispy will be obtained.

Applicant argues the limitation of claim 22, Partyka does not disclose that the product has problem of burning upon toasting; thus, the limitation is met because the claim does not define what the forming of the peripheral edge portion entails.

Applicant's arguments filed Sept. 5, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax

Application/Control Number: 09/912,219

Page 6

Art Unit: 1761

phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 12, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700